

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET, SUITE 10400  
WILMINGTON, DE 19801-3733  
TELEPHONE (302) 255-0670

December 17, 2015

Anthony A. Figliola, Jr., Esquire  
Figliola & Facciolo  
1813 Marsh Road, Suite A  
Wilmington, DE 19810

RE: State v. David Dorsey  
ID No. 1401007734

Submitted: September 4, 2015  
Decided: December 17, 2015

Defendant's Motion for Postconviction Relief - DENIED  
Defense Counsel's Motion to Withdraw - GRANTED

Dear Mr. Figliola:

The Court has before it your Motion to Withdraw as court-appointed counsel for David Dorsey ("Defendant"). Defendant filed his *pro se* petition on August 14, 2014. On October 16, 2014, Peter Veith, Esquire was appointed to represent Defendant, but eventually had to withdraw as counsel due to the discovery of a conflict. As a result, you were appointed on June 26, 2015 to represent Defendant in perfecting his Superior Court Criminal Rule 61 petition. Having found Defendant's ineffective assistance of trial allegations without merit, you filed this Motion to Withdraw consistent with Rule 61(e)(2) on September 4, 2015. Defendant was notified that he had 30 days to file a response to your Motion. The Court has not received a response from Defendant.

On April 16, 2014, Defendant pled guilty to Resisting Arrest (Felony). He was subsequently declared an habitual offender and sentenced on July 11, 2014 to two years of incarceration consistent with the plea agreement. In his *pro se* Rule 61 petition, Defendant asserts that his trial counsel was ineffective by failing to

subpoena a video of his arrest and that failure affected his decision to plead guilty. The Court agrees, there is simply no merit to this claim.

First, there is no indication that a video of Defendant's arrest ever existed. Neither the discovery materials provided by the State nor the investigative notes from the Public Defender's Office reflect the existence of a video. The lack of a video was also confirmed by you when reviewing the Rule 61 petition. As a result, even if Defendant requested trial counsel to issue a subpoena, there was no video to obtain and counsel was not ineffective for his failure to attempt to subpoena something that never existed.

The Court has also reviewed the plea colloquy and finds that Defendant made a knowing, voluntary, and intelligent plea and he admitted to committing the offense at that time. He advised the Court he was satisfied with trial counsel, and at no time did he object to counsel's representation.

Based on the above, the Court finds that Defendant has failed to establish that trial counsel's performance fell below an objective standard of reasonableness or that, even if counsel did err, the result here would have been different. Finding that Defendant has failed to establish the requirements of *Strickland v. Washington*, his Motion for Postconviction Relief is hereby denied.<sup>1</sup> Your Motion to Withdraw is granted, and you are reminded of your continuing obligation under Rule 61(6)(ii) regarding notification to Defendant.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Joseph Grubb, Esquire  
David Dorsey  
Prothonotary  
Investigative Services

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<sup>1</sup> 466 U.S. 668 (1984).